IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.09.2020

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THE HONOURABLE **Mr. JUSTICE T.S.SIVAGNANAM**
AND
THE HONOURABLE **Mrs. JUSTICE V.BHAVANI SUBBAROYAN**

T.C.A.Nos.539 and 541 of 2019

Commissioner of Income Tax,
Non Corporate Circle 10(1)
Chennai - 600 034 ... Appellant in both the appeals

Vs.

Shri S.P.Ganesan ..Respondent in both the appeals

Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961, are directed against the Orders passed by the Income Tax Appellate Tribunal, "B" Bench, Chennai in I.T.A Nos.389/Chny/2018 and 388/Chny/2018 dated 16.11.2018 for the assessment years 2011-2012 and 2007-2008 respectively.

In both the Appeals:

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel
assisted by
Ms.V.Pushpa
Junior Standing Counsel

For Respondent : Mr.Amrith Bhargav for
Mr.Harishankar Mani

COMMON JUDGMENT

[Common Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

These appeals have been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ['the Act', for brevity] challenging the common order dated 16.11.2018 passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai ['Tribunal' for brevity] in I.T.A Nos.388 and 389/Chny/2018 for the assessment years and 2007-2008 and 2011-2012 respectively.

2. The Revenue has raised the following substantial questions of law for consideration:

> *'1. Whether on the facts and in the circumstances of the case and the decision of the Income Tax Appellate Tribunal was correct in deleting the penalty levied u/s 271(1)(c)?*
>
> *2. Whether on the facts and circumstances of the case and the decision of the Income Tax Appellate Tribunal ought to have considered that the assessee is a Doctor by profession, but has also engaged in speculative business of*

trading in futures and options through broker & claimed that the losses incurred in share trading was eligible to be set off against his professional income, thus furnishing inaccurate particulars of income in the return?.

3. We have elaborately heard Mr.M.Swaminathan, learned senior standing counsel assisted by Ms.V.Pushpa, leaned counsel appearing for the appellant and Mr.Amrith Bhargav, learned counsel for Mr.Harishankar Mani, learned counsel appearing for the respondent.

4. The matter pertains to levy of penalty under Section 271(1)(c) of the Act. The assessee is a Doctor and also the Medical Director of a Diagnostic Centre in Chennai, which is solely owned by assessee's wife. The assessee also derives income from house property, professional income and share trading, apart from income from other sources. For the assessment years under consideration, the assessments were completed under Section 143(3) r/w Section 147 of the Act. The assessing officer disallowed the claim made by the assessee for set off the losses incurred in the share trading business from that of the professional income.

5. The penalty proceedings was initiated on the ground that the assesee has concealed particulars of income and also furnished inaccurate particulars of income. The reason for coming to such a conclusion is on the ground that the assessing officer while completing the assessment, rejected the plea of the assessee with regard to set off and effected additions. The question is whether this can give raise to initiation of penalty proceedings under Section 271(1)(c) of the Act?. In response of the show cause notice issued by the assessing officer proposing to levy penalty, the assessee stated as follows:

> *'1. The loss from Anagram Securities Ltd., incurred in F&O trading amounting to Rs.2,98,170/- could not be substantiated with necessary evidence as there was no current relationship with the said broker and hence details could not be obtained from them.*
>
> *2. At the time of filing of the return, the breakup of the loss incurred under various segments of trading carried out through M/s.Shreyas Stock Pvt., Ltd., was not available and hence the entire loss was claimed as loss on account of share trading.*

3. It was only during the reassessment proceedings that the exact nature of loss came to light when the information was obtained from the broker.

4. The disallowance made u/s14A is of technical nature and no concealment of income can be inferred there from.

6. The assessing officer after considering reply of the assessee, sustained the proposal in the notice and imposed minimum penalty on the ground that there has been concealment of income and the furnishing of inaccurate particulars. The assessee carried the matter on appeal to the Commissioner of Income Tax Appeals 12, Chennai (for brevity 'CITA'). The assessee contended before the CITA that the income from speculative transaction is only through a 'delink provision' and assessee had no knowledge of such 'delink provision'. Further, the assessee contended at the time of entering into a contract, the assessee did not have any intention to enter into a speculative transaction.

7. Further, the assessee contended that he had entered into a transaction for purchase or sale of shares and the loss was due to a pair of transactions and hence the provisions of Section 43(5) is not applicable, as it applies to a single transaction, either purchase or sale. Further, it was contended that the assessing officer in the penalty proceedings, did not traverse beyond the assessment order passed by his predecessor to satisfy itself as to whether the assessee had concealed the particulars of income or / and furnished inaccurate particulars of income. Further, the assessing officer failed to take note of the conduct of the assessee during the quantum assessment by voluntarily bringing on record all the material and no contradictory information was furnished by the assessee.

8. The CITA was of the opinion that the assessee had deliberately filed the return of income without disclosing the transactions correctly and completely. We find that this observation is not borne out by any records, as neither the assessing officer, who completed the quantum assessment, nor the officer, who passed the penalty order had used

such expression alleging deliberate conduct of the assessee and ultimately, the appeals were dismissed by an order dated 27.11.2017.

9. The assessee carried the matter on appeal with the Tribunal. It was argued before the Tribunal that the assessee has furnished the details of transactions of sale and purchase of shares including trading in futures and options and the assessee's set off losses suffered in the share trading against other income and offered the net income for taxation. Thus, it was argued that merely because the assessee claimed a set off losses while filing the return of income, it cannot be construed that the assessee furnished inaccurate particulars or concealed any part of his income.

10. The Tribunal considered the materials placed on record and in particular, the factual position of the case and noted that the assessee had admittedly suffered losses and set off those losses suffered in trading and share against other income. However, this was disallowed by the assessing officer on the ground that the transactions in purchase

and sale of shares are speculative transactions and therefore, it cannot be set off.

11. The question framed for consideration by the Tribunal was whether making of a claim of set off losses suffers in share trading would amount to furnishing inaccurate particulars of income? After referring to Section 271(1)(c) of the Act, the Tribunal pointed out that the assessing officer may levy, if he is satisfied that the assessee has concealed particulars of income or furnished inaccurate particulars of income and on facts, the Tribunal found in the assessee's case that the assessee has furnished entire transaction details before the assessing officer.

12. Furthermore, the Tribunal has recorded a finding of fact that it was never the case of revenue that the assessee has concealed any part of his income and also noted the argument of the Department before the Tribunal that claiming a set off in respect of losses would amount to furnishing of inaccurate particulars of income. This argument was considered for its correctness and the Tribunal followed the

decision of Hon'ble Supreme Court in C.I.T., Ahmedabad V. Reliance Petroproducts Pvt., Ltd., [2010] 322 ITR 158 and held that after furnishing the details and making a claim in the return of income, does not amount to furnishing inaccurate particulars or concealed any part of income. Further, the Tribunal, held that the assessee had made a claim after furnishing entire details and it is his personal opinion with regard to the computation of income tax and there may be difference of opinion with regard to nature of transaction by the assessee on the one end and the opinion of the department on the other end and such difference of opinion, cannot be construed as furnishing inaccurate particulars of income, as pointed out by the Hon'ble Supreme Court in Reliance Petroproducts Pvt., Ltd., Thus, upon noting the factual position, the Tribunal with the above mentioned reasoning allowed the assessee's appeal.

13. It is argument of Mr.M.Swaminathan, learned senior standing counsel for the appellant that the deliberate intention of the assessee is manifest from the fact that for two assessment years, similar claim has been made. It is not clear as to when the assessments were taken up

for consideration and whether they were simultaneously taken up; and in any event, as always argued by the revenue before us, each assessment year is distinct and different and we find that this cannot be a ground to upset the factual finding recorded by the Tribunal.

For the above reasons, we find that no substantial question of law arises for consideration in these appeals and the appeals are dismissed. No costs.

(T.S.S.J.) (V.B.S.J.)

30.09.2020

Index :Yes / No
Internet :Yes / No
Speaking Judgment / Non Speaking Judgment

ssd

To

The Income Tax Appellate Tribunal,
“B” Bench, Chennai

T.S.SIVAGNANAM,J.,
AND
V.BHAVANI SUBBAROYAN, J.,

ssd

T.C.A.Nos.539 and 541 of 2019

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